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Draft regulations for exploitation of mineral resources in the Area

Functions of the organs of the Authority in relation to the preparation of rules, regulations and procedures on exploitation of mineral resources in the Area and in relation to the system of compensation envisaged under article 151 (10) of the United Nations Convention on the Law of the Sea

Note by the secretariat

I. Introduction

1. In discussions in the Council during the first part of the twenty-fourth session of the International Seabed Authority, several delegations requested greater clarity on the functions of the organs of the Authority with regard to the process of drafting and approving rules, regulations and procedures relating to the exploitation of mineral resources in the Area. The purpose of the present note is to review the relevant provisions of the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and to explain the specific functions of the Assembly, the Council, the Legal and Technical Commission and the Finance Committee.

2. In the note, the provisions of the Convention, as read with the Agreement, are also reviewed in relation to the system of compensation envisaged under article 151 (10) of the Convention, given that the changes made in that system under the Agreement will affect how the organs of the Authority carry out their functions. For ease of reference, the content of the note is summarized in tabular format in the annex.

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II. Functions of the organs in relation to the drafting of rules, regulations and procedures on exploitation of mineral resources in the Area

A. Assembly

3. The supreme organ of the Authority is the Assembly, to which all other organs are accountable (art. 160 (1)). Under article 160 (2) (f) (ii), the Assembly is required to consider and approve the rules, regulations and procedures of the Authority, including those relating to prospecting, exploration and exploitation, and any amendments thereto, provisionally adopted by the Council pursuant to article 162 (2) (o) (ii). If the Assembly does not accept the recommendation of the Council on any such matter, it returns the matter to the Council for further consideration. The Council then considers the matter in the light of the views expressed in the Assembly.

4. The Assembly must also consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status (art. 160 (2) (f) (i)). If the Assembly does not approve the recommendations of the Council in relation to the matters referred to in article 160 (2) (f) (i), it returns them to the Council for further consideration in the light of the views expressed by the Assembly.

5. In addition, under article 160 (2) (g), the Assembly, acting on its own behalf, decides upon the equitable sharing of financial and other economic benefits derived from activities in the Area.

6. The role of the Assembly in relation to the economic assistance fund is dealt with in section III of the present note.

B. Council

7. Under article 162 (2) (o) (i), the function of the Council is to recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status. Furthermore, under article 162 (2) (o) (ii), it adopts and applies provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, and any amendments thereto, taking into account the recommendations of the Legal and Technical Commission or other subordinate organ concerned. Those rules, regulations and procedures relate to prospecting, exploration and exploitation in the Area. The scope of the matters covered by the regulations is set forth in greater detail in article 17 of annex III to the Convention, on basic conditions of prospecting, exploration and exploitation.

8. Decisions of the Council in relation to the above-mentioned matters are made by consensus.

9. The Council is also responsible for establishing appropriate mechanisms for directing and supervising a staff of inspectors whose task will be to inspect activities in the Area (art. 162 (2) (z)).

C. Legal and Technical Commission

10. The task of the Legal and Technical Commission under article 165 (2) (f) is to formulate and submit to the Council the rules, regulations and procedures referred to in article 162 (2) (o), taking into account all relevant factors, including assessments of the environmental implications of activities in the Area. This comprehensive provision makes clear that, except where otherwise specified in the Convention or the Agreement, the primary responsibility for formulating regulations, including on all the matters specified in article 17 of annex III, rests with the Commission.

11. The Commission will also make recommendations to the Council regarding the direction and supervision of the staff of inspectors referred to above (art. 165 (2) (m)).

D. Finance Committee

12. The Finance Committee was established under the Agreement and its functions are specified under section 9 of the annex to that Agreement. Those functions affect the way in which other organs of the Authority perform their functions under the Convention in several ways. In particular, the Assembly and the Council must take into account the Committee's recommendations in their decisions on any of the matters listed in section 9 (7), including the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority; and rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

13. In addition, section 7 (1) (a) of the Agreement provides that, in connection with the system of compensation to be established by the Authority under article 151 (10) of the Convention, the amount to be set aside for the economic assistance fund[1] will be determined by the Council, upon the recommendation of the Committee. That aspect is discussed further in section III of the present note.

14. Based on the above-mentioned provisions, the role of the Committee is to make recommendations to the Council on:

(a) The rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon. That is a matter solely within the competence of the Committee;

(b) The amount to be set aside for the economic assistance fund, once that fund has been established. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions are used for this purpose;

(c) Financial matters with administrative and budgetary implications for the funds of the Authority that arise in connection with the exploitation regulations. In the current draft (ISBA/24/LTC/WP.1), this would include:

(i) Draft regulations 82, 84 and 85: annual, administrative and other applicable fees. The draft regulations provide for an annual reporting fee, an application processing fee and other administrative fees. Appendix II to the draft regulations contains a list of administrative fees. They would be charged for all services

[1] Based on the Agreement, the form of assistance for developing countries that suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, is to be limited to an economic assistance fund created from the payments made by contractors, including the Enterprise, and voluntary contributions.

provided by the Authority at a rate to be fixed from time to time by the Council to ensure that they cover the Authority's expected administrative costs of the service provided (draft regulation 86 (1)). Any Council decision in that regard must be based on the Committee's recommendations (Agreement, sect. 9 (7) (e));

(ii) Draft regulation 83: annual fixed fee from the date of commencement of commercial production. The fee will be set by the Council (Agreement, sect. 8 (1) (d)). Although there is no reference in the Agreement to the Finance Committee in that regard, it should be consulted because the fee will have budgetary implications, given that it will have the effect of offsetting the assessed contributions of member States to the administrative budget of the Authority;

(iii) Draft regulation 27: environmental performance guarantee. The form and amount of any such guarantee would need to be established by the Legal and Technical Commission. The Committee would need to be consulted with regard to the appropriate financial rules and procedures for holding such guarantees (for instance, if they were provided in cash);

(iv) Draft regulations 52–54: environmental liability trust fund. The purpose of such a fund and options for financing are yet to be discussed by the Council. Should it be established, the Committee would need to be consulted with regard to its rules of procedure and the method of its funding.

III. System of compensation under article 151 (10) and the role of the Economic Planning Commission

15. Article 151 of the Convention, which deals with the Authority's production policies, was largely superseded by the Agreement. Article 151 (10), albeit considerably modified by the Agreement, provides for the establishment by the Assembly, upon the recommendation of the Council and based on advice from the Economic Planning Commission, of a system of compensation or the adoption of other measures of economic adjustment assistance, including cooperation with specialized agencies and other international organizations, to help developing countries that suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area.

16. The implementation of article 151 (10) of the Convention is modified considerably by the Agreement. The functions of the Economic Planning Commission are, pursuant to the Agreement, being carried out by the Legal and Technical Commission until such time as the Council decides otherwise, or until the approval of the first plan of work for exploitation. Those functions, which are set out in article 164 of the Convention, are also limited by the Agreement to a study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals that are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment (sect. 1 (5) (e)).

17. The Agreement further provides that the policy of the Authority with regard to assisting developing countries that suffer serious adverse effects on their export earnings or economies is to be based on a series of principles set forth under section 7. They include that assistance under article 151 (10) should be provided through an economic assistance fund created from a portion of the Authority's funds exceeding those necessary to cover the administrative expenses of the Authority. The amount of the fund is to be determined by the Council, based on a recommendation of the

Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions are to be used for this purpose. All related provisions of the Convention are to be interpreted accordingly.

IV. Conclusion

18. The Council is invited to take note of the present note, which is presented for information purposes only.

Annex

Summary of the functions of the organs of the Authority in relation to the preparation of rules, regulations and procedures on exploitation of mineral resources in the Area and in relation to the system of compensation envisaged under article 151 (10) of the United Nations Convention on the Law of the Sea

Task	*Organ responsible*	*Comments*
Approval of rules, regulations and procedures relating to exploitation	Assembly	Approval of rules, regulations and procedures, as provisionally adopted by the Council. If the Assembly does not approve, it returns the matter to the Council for further consideration.
Approval of rules, regulations and procedures on the equitable sharing of financial and other economic benefits (and the payments and contributions made pursuant to article 82)	Assembly	Approval upon recommendation of the Council. If the Assembly does not approve, it returns the matter to the Council for further consideration.
Decisions on equitable sharing of benefits	Assembly	No prior consideration or recommendation of the Council is required.
Recommendation to the Assembly of rules, regulations and procedures on the equitable sharing of financial and other economic benefits (and payments and contributions made pursuant to article 82) (art. 162 (2) (o) (i))	Council (by consensus)	Decisions of the Assembly and Council must take into account the recommendations of the Finance Committee where they concern rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon (Agreement, sect. 9 (7) (f)).
Adoption and provisional application, pending approval by the Assembly, of rules, regulations and procedures relating to prospecting, exploration and exploitation in the Area (art. 162 (2) (o) (ii))	Council (by consensus), taking into account recommendations of the Legal and Technical Commission or other subordinate body concerned	Decisions of the Assembly and Council must take into account the recommendations of the Finance Committee where they concern administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority (Agreement, annex, sect. 9 (7) (e)).
Establishment of an appropriate mechanism for directing and supervising a staff of inspectors (art. 162 (2) (z))	Council	

Task	*Organ responsible*	*Comments*
Formulation and submission to the Council of the rules, regulations and procedures referred to in article 162, (2) (o), taking into account all relevant factors, including assessments of the environmental implications of activities in the Area (art. 165 (2) (f))	Legal and Technical Commission	
Submission of recommendations to the Council regarding the direction and supervision of a staff of inspectors (art. 165 (2) (m))	Legal and Technical Commission	
Submission of recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse the risks or effects of pollution of the marine environment resulting from activities in the Area (art. 165 (2) (h))	Legal and Technical Commission	
Establishment of a system of compensation or other measures of economic adjustment assistance to assist developing countries that suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area (art. 151 (10))	Assembly, upon the recommendation of the Council and based on advice from the Finance Committee and Economic Planning Commission (art. 160 (2) (l) as modified by the Agreement, annex, sect. 7)	(1) The functions of the Economic Planning Commission are to be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation (Agreement, annex, sect. 1 (4)). (2) The policy of the Authority of assisting developing countries will be based on an economic assistance fund established using a portion of the funds of the Authority which exceeds those necessary to cover its administrative expenses. The amount set aside for that purpose will be determined by the Council upon the recommendations of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used (Agreement, annex, sect. 7).
Determination of the amount of the economic assistance fund	Council	Upon the recommendation of the Finance Committee

Task	*Organ responsible*	*Comments*
Provision of advice to the Council on the establishment of the economic assistance fund and on the matters referred to in article 164 (2)	Legal and Technical Commission (performing the functions of the Economic Planning Commission)	